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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/674,953	09/29/2003	Gregory D. Dietz	1792.001US1	5273

7590 04/19/2006  
Lemaire Patent Law Firm, PLLC  
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St. Paul,, MN 55111

EXAMINER
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JOHNSON, STEPHEN

ART UNIT	PAPER NUMBER
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3641

DATE MAILED: 04/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/674,953

Applicant(s)

DIETZ, GREGORY D.

Examiner

Stephen M. Johnson

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 02 February 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) 6-9 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 13 is/are allowed.
- 6) ☒ Claim(s) 1,3-5,10-12,14-17,19-22 and 24-26 is/are rejected.
- 7) ☒ Claim(s) 2,18 and 23 is/are objected to.
- 8) ☒ Claim(s) 1-26 are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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1. Applicant's election with traverse of species D (figs. 12, 14, 15, and 16) in the reply filed on 5/6/2005 is acknowledged.

Claims 6-9 are withdrawn from consideration as being directed to non-elected species.

Claims 1-5 and 10-26 read on the elected species and an action on these claims follows.

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 3-5, 10-12, 14-17, 19-22, and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Sammut (995).

Sammut discloses a gun sight comprising:

- |  |                         |
|--|-------------------------|
| a) a first sight indicator closer to the gun barrel;         | 10, 20                  |
| b) a second smaller sight indicator farther from the barrel; | 9, 20                   |
| c) a gun barrel;   | 38                      |
| d) configuration to compensate for target motion;            | 26, col. 5, lines 29-34 |
| d) a clamping system; and                                    | see fig.4               |
| e) a substantially straight visible line.                    | 20                      |

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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5. Claims 24-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sammut (995) in view of Lyman Jr..

Sammut applies as previously recited. However, undisclosed is a clamping system to threadably clamp a movable clamp portion to a fixed clamp portion. Lyman Jr. teach a clamping system to threadably clamp a movable clamp portion to a fixed clamp portion 13, 16, 20, 23 (page 1, lines 75-82). Applicant is substituting one type of mounting means for another in an analogous art setting. It would have been obvious to a person of ordinary skill in this art at the time of the invention to apply the teachings of Lyman Jr. to the Sammut gun sight and have a gun sight with a different type of mounting means.

6. Claims 19-22 and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Shepherd.

Shepherd discloses a gun sight comprising:

- |   |                          |
|---|--------------------------|
| a) a first sight indicator;               | 93                       |
| b) a second sight indicator;              | 97                       |
| c) a third sight indicator;               | 95                       |
| d) a gun barrel;                          | see fig. 1               |
| e) a substantially straight visible line; | see fig. 7               |
| f) gun sight attachment means;            | see fig. 1               |
| g) a fourth sight indicator;              | 99                       |
| h) a fifth sight indicator;               | 101                      |
| i) compensation for target motion; and    | 141, col. 8, lines 59-65 |
| j) a clamping system.                     | see fig. 1               |

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7. Applicant's arguments are addressed as follows. It is argued that the men in figure 7 are not aligned through the line in figure 7. In response, note that what applicant has claimed is "both along a first direction that extends from the gun barrel". Clearly the silhouetted men in fig. 7 extend along a direction that extends from the gun barrel even if they are not located on the line in figure 7. Applicant argues that he does not see where target motion is compensated for. In response, each of the silhouetted men 93-103 in combination with the windage adjustment 141 provides this function. The silhouetted men portions is the portion that is progressively closer to the barrel as the silhouettes diminish in size.

8. Claims 19-22 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gregory (739) in view of Shepherd (776).

Gregory discloses a gun sight comprising:

- |   |                      |
|---|----------------------|
| a) a first sight indicator;                       | 100 yard deer        |
| b) a second sight indicator;                      | 300 yard deer        |
| c) a gun barrel; and                              | inherent to firearm; |
|   | col. 10, lines 62-68 |
| d) configuration to compensate for target motion. | col. 7, lines 48-61; |
|   | col. 10, lines 61-68 |

Since there appears to be some argument as to how Gregory would be mounted on a firearm, Shepherd explicitly teaches both how this would be done and confirms what is already shown in fig. 9 of Gregory with regard to locating different silhouettes at different locations associated with different ranges. Applicant is selecting a telescopic sight mountable to a firearm and showing both how it would be explicitly mounted (see fig. 1) and how the silhouettes would

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appear after mounting (see fig. 7). It would have been obvious to a person of ordinary skill in this art at the time of the invention to apply the teachings of Shepherd to the Gregory gun sight and have a gun sight that is explicitly mounted on the upper portion of the gun barrel.

9. Claims 2, 18, and 23 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.


10. Claim 13 is allowed.

11. Applicant's arguments filed 2/2/2006, with regard to Shepherd, have been fully considered but they are not persuasive. These arguments have been addressed in the preceding paragraphs of this Office action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen M. Johnson whose telephone number is 571-272-6877 and whose e-mail address is ([Stephen.Johnson@uspto.gov](mailto:Stephen.Johnson@uspto.gov)). The examiner can normally be reached on Tuesday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone can be reached on 571-272-6873. The Central FAX phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 800-786-9199.



**STEPHEN M. JOHNSON**  
**PRIMARY EXAMINER**

Stephen M. Johnson  
Primary Examiner  
Art Unit 3641

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SMJ

April 14, 2006